2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

again necessary to distinguish between theory and practice. In theory the uru was supposed to avenge any injury done to one of its members for which compensation was not forthcoming, and on the other hand was collectively responsible for the payment of damages for any injury which one of its members might commit against a member of another group. In practice, however, according to my information, class affiliations were in general of greater importance than blood relationship. Whereas, as mentioned above, disputes between powerful individuals of different groups would commonly lead to war involving all their kinsmen and followers, the humbler members of the uru could not count with any certainty upon receiving support from their wealthy patrons. If, of course, the leaders of the uru were looking for a pretext to begin hostilities they might seize eagerly upon an injury done to any of their followers which would serve to justify their action. On the other hand if it suited their policy to remain on good terms with the opposing group the victim would obtain scant sympathy. He might perhaps resort to direct action to obtain redress but in the event of coming to grief would be disavowed by his own uru. In opposite circumstances an influential individual responsible for an injury might requisition the amount of the damages from his henchmen, if he decided to pay them at all, while the poor man could only hope that his patron would feel generously inclined. The claims of kinship were weighted in favor of the upper class and the right of resorting to arms tended to become their prerogative.

LAW

In the previous section I have discussed baranta as the ultimate means of settling disputes by recourse to arms. Normally, however, it would be considered only as a last resort. For the settlement of nearly all possible grievances of one individual against another the Kazak had elaborate provision in their system of customary law.[21]

Under this legal code all actions were considered as claims for damages by one party from another. No action could be taken against an individual in the interests of society as a whole but only on the charge of specific injury to person or property brought by the victim.[22]

Such charges did not distinguish between civil and criminal offenses. All injuries from murder to the misuse of borrowed property might be compensated for according to an elaborate tariff of fines, damages and reparations. It was the office of the bij, or judge, to fix the responsibility for damage done and to determine the amount of compensation to be paid.

This was accomplished through a process of trial involving the examination of witnesses for both sides under oath. It is difficult at the present time to estimate accurately the nature of trial procedure in the days prior to the Russian occupation. Most accounts of

[21] Adat or zuj; the former is the borrowed Arabic term, the latter Turkic. See Grodekov, *Kirgizy i Karakirgizy*, 20.

[22] Dingelstedt, *Le Droit coutumier*, 321.

Dingelstedt, *Le Droit coutumier*, 321.

e cat. 116, p. 66 -- Analyst]

e cat. 116, pp. 66-67 -- Analyst]

2: Hudson E-4, 5 (1936) 1938 RQ2 Kazak RQ2

another. It would be necessary for them to "go to another aul, or to the mountains, or to the city."

A comparison of Kazak legal institutions as they appear to have existed at the beginning of Russian penetration with those of earlier Turkic and Mongol codes[38] suggests a gradual substitution of the principle of compensation for that of blood revenge and the lex talionis. Vladimirtsov indicates[39] that blood vengeance was already declining in the thirteenth century. The influence of Moslem jurisprudence[40] is also evident in this transition among the Kazak especially in the emphasis placed on witnesses and the oath. The fact that the Koran[41] specifically forbids a Mohammedan to kill another believer intentionally may also have had some restraining effect on personal feuds.

[38] Riasanovskii, *Customary Law of the Mongol Tribes*, 70–81; the Kazak legal code attributed to the Khan Tiavka at the beginning of the eighteenth century (Levshin, *Description des hordes*, 398–401) is similar in many points to the laws of Chingis (Riasanovskii, *op. cit.*, 77), but emphasizes the element of compensation lacking in the latter. See also Riasanovskii's *Customary Law of the Kirghiz*, 207–11.

[39] *Obshchestvennyi Stroi*, 53–54.

[40] Levy, *An Introduction to the Sociology of Islam*, 1: 213–274; Riasanovskii, *Customary Law of the Kirghiz*, 212.

[41] *Holy Koran*, 4.13.93.

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Dzhanys volost	Clans:		
		Chegyr	416 tents
		Dzhanys	603
/20/		Sirgeli	11
		Total	1,030 tents

6) The chief of the Perovsk uyezd reported that the administrative division of the uyezd into volosts and villages existed only officially. Actually, the volosts and villages are composed either of Kazakhs of one clan or of clans which are close to each other, and this is confirmed by the following. Three volosts, located north of Perovsk, belong exclusively to the Kypchak clan, and although there are 150 tents of Argyn and 200 tents of Naiman among them, these have no importance among the Kypchaks because of their small number, and are under the influence of the Kypchaks. The Kintub volost is composed exclusively of Dzhappas and the Dzhappas clan also rules in the Tsarskaya volost, the Konstantinovsk, the Samurunovsk and the Chagan volosts, over the less numerous Bakhtiar, Hodja, Tazlar, Naiman and other clans. The Dzhumartov volost is composed of Kereit, the Bayuzak volost of Tabyn. The Karmakchi volost consists of Alshyn and Kereit, the Nikolaevsk Kysbugut and Yany-Darya volosts are composed of Chumikei, and the Akkyr volost contains Kete. The nomads are grouping themselves in their clans by means of frequent transfers.

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The custom according to which the Kazakhs live and are judged has the Turkic name zang, or the Arabic name adat.

The origin of the zang, it must be supposed, is concealed in in that remote time when all the Turkic peoples now scattered over Asia lived one common life. This is proven among other things by the fact that such strongly Mongolized branches of the Turkic people as the Yakuts, Buriats, Tunguz and other Siberian natives have many customs in common with the Kazakhs. (The Collection of Customary Law of the Siberian Indigenous Peoples by D. Ia. Samokvasov). These common customs are: the clan principle, kalym /the bride price/, the bride's belonging not to the individual but to the clan, the ex-

...ge of daughters without the bride price, the term terkun with ... meaning of "relative of the wife, the father's house of the wife", ...fine of two head of cattle for stealing (among the Buriats), the ...atory oath, the disavowal from which conviction is established ...ng the Buriats), the /21/ increase of the punishment on the ...etition of theft (among the Yakut), banishment for the fourth

171 theft (among the Buriats), the succession of the children without
171 allotment (among the Yakut), the obligation to reciprocate in giving gifts (among the Yakut), Suyunchi (among the Buriats), matchmaking at a young age (among the Buriats); the woman's lack of property (among the Yakut); her private property consists of clothing and ornaments; in place of the dead bride, her sister is given away (among the Buriats); the widow marries a kinsman of her husband (among the Buriats); she is free not to marry at all (among the Buriats and Tunguz).

Among the Kirgiz, the zang or adat is the same as it is among the Kazakhs, with small deviations.

171 In the customary law the customs of private life are not distinguished from judicial customs; moral duties are not demarcated from juridical duties, nor domestic and administrative payments from court payments.

In the old customary law there was no difference between authority, being of good birth, and the court and administrative powers.

The word "law" /pravo/ in the European sense does not exist in the Kazakh language. The word khak means: 1) truth, 2) God, and 3) the right to receive something.

The oldest law was the right of the strong. (1) There could be

1. There are the proverbs: for one person two persons are God; "the people is holy", i.e., the will of the people is holy.

no individual rights. (2) Freedom (kengchilik) was not differentiated

2. On the contrary, the individual was entirely in the power of the clan. In the customary laws of the Caucasian mountaineers articles were entered from the collection of Kaitakh customary laws of Rustem khan of the 12th century: "if any village which belongs to the Kaitakh society detaches itself, it must pay 300 rubles" and if any one person detaches humself from the society he must pay 100 rubles."

om willfulness. The violation of someone's interests led to a fight
sulting in victory or reconciliation. In the course of time the custom
as worked out of reconciliation on the basis of mutual satisfaction.
oluntary concessions, for example, kunakasy, the allotment of inchi,
e founded on the fear of confiscation by force.

Now the individual is undoubtedly beginning to be conscious of

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the possibility of making use of the conveniences put at his disposal by the /22/ existing order, in the sense of freedom of action, protection by law from persecution, the appeal of decisions, etc. The closer to the town, the more the rights of the individual are respected.

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The main theses of the oral tradition of customary law are the same everywhere. The details vary according to time and place. There is already fear that the unity of the Kazakhs is disappearing (kazaktyng birligi kitedi), as a result of the decline of the clan principle and the community of property. The changed conditions of life have brought forth the rise, so to speak, of a new customary law. This has been influenced by the conversion to Islam of the Kazakhs, the proximity of the Kokandians in the fortresses, the transition of a part of the nomads to sedentary life, and the moral influence and decrees of the Russian administration. The main features of the new customary law are: the limitation of the clan bond and clan property to a narrower circle, which was also the aim of the law, according to which the Turkestan region was administered until 1887; (1) giving brides and

1. The Draft of a Code for the Administration in the Semirechie and Syr-Darya regions, 1867.

widows the freedom to choose a husband; the introduction of the use of written acts; the exchange of reckoning by livestock to reckoning by money, etc.

Now the old customary law has lost its force (adattyng kushi ketti), and a new customary law is rising. Formulas like these have begun to be used: in accordance with the customary law of the extraordinary session between these and these uyezds. A considerable part of the business of the present sessions of the biis consists of the adjudication of money for bills of exchange and receipts. Quite often such documents are examined as the certificates of Russian doctors, decisions concerning the capture of thieves corpus delicti, fraudulent records and receipts, reports with the special opinion of the minority, and information from the transport office. One finds complaints concerning the non-issuance of a copy with a decision, on the appropration of money which had been made over to be deposited in the uyezd pawn-broker's with the interest,

ver watch which was lost at a prostitute's, etc. The session
es land and other decisions (osu ishni nygytamyz), collects the
es of those who have been pacified, in /23/ anticipation of a
d claim for the wergeld, and finally, it even ordains judgment
ult, an innovation unheard of in the old customary law. Philo-

671 logical innovations appear along with the juridical ones. As an ex-
178 ample we enter the usual opening of the reports of the extraordinary sessions /chrezvychainyi s"ezd/ in the Perovsk uyezd: bz chirizvychainyi s"ez biileri yasaimizler ushbu purtukulni aning khakynda kim. . . . In place of "bii" one finds the "judge bii. "Disagreements can be heard among the biis concerning the actual character of the present customary law (toluk adat). Hence a desire has been expressed by several personages in the Russian administration to have a codex of customary laws, collected by inquiries and reviewed with the participation of experts, which could serve as a protection of the litigants from arbitrary action by the court.

671 Among the Kazakhs there is an inclination to the Shariat, which has been taught them by the more educated mullahs. Thus, for example, Aviz (of the Perovsk uyezd) remarked: "it is unfortunate that when the region was taken we did not request the Shariat for ourselves. There is no customary law, but there is the Shariat. " In answer to a question concerning articles of the Shariat which have not been foreseen by the customary law, for example, the right of the neighbor (shafi) as a privileged buyer, bii Umur-Beg of the Auliye-Ata uyezd has recognized the Shariat as more important than the customary law. Concerning conflicts between the Shariat and the customary law, he said: "We are slaves of the Shariat, we do not defend the customary law (shariatka kulmyz adatka talaspaimyz). " Only concerning the uncovering of the faces of the women (1) did he admit that this is a

671 562 1. In Yangabazar /Yangi-Bazar near Tashkent, the former volost administrator mullah Musa and the Kazakh Dzhumatai wanted to introduce the seclusion of women in their houses. But the Kazakhs continued to go in to see them (basaverdi). They said: "Our fathers and grandfathers did not force the women to be shut off; this is not in our customary law. " (ata babamyz katyrgan yok, zangy myzda yok). Mullah Musa had the same lack of success when he wanted to prohibit the singing of couplets (ulen) at the marriage of his daughter, since they are not sung among the Sarts. The arguments on the basis of which the Kazakhs consider it possible to depart from the Shariat on the question of covering the faces of the women, and not to consider it a sin to see their faces (kurgen ksi guneker bulmaidy) are as follows: 1) the Kazakh woman who has been acquired as a wife for money is the same

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as a slave (churi khisabi bulady), and 2) she is not easily beguiled by strangers since she lives on the steppe and works beside her husband, loading the camels, milking cows and nursing the children (bagane adamga kub kungul' bermeidi, bayina kyzmet kylyb tyuya artib mal saub bala chagasyna karab yuredi).

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custom (minez rasm) of the Kazakhs and they enjoy great freedom (kazak keng bulady). Torgai spoke of the customary law in this way: "The customary law is really a suckling pig" /24/ (chuchkanyng bel'gi balsy). He does not subordinate himself to the customary law. As Kyul'baev, a Kazakh of the Kurama uyezd, expressed it, the customary law is the stable boy of the Shariat (adat shariatyng yilaukeri). In the Kurama uyezd a small number of sedentary Kazakhs have accepted the Shariat, but most of them hold to the customary law. However the administration is constantly receiving requests to introduce the Shariat among them. The best people are judged by the kazi, where they can soon be absolved by their personal oath, while with the bii, the oath is imposed on a kinsman in the third lineage or further removed, which makes the position of the litigant more difficult. In the Kurama uyezd the people are asked if they want to be judged by the customary law or by the Shariat, and they know that the customary law is agreeable (makul) to the Russians.

In the books of the biis of the Perovsk uyezd one finds the phrases: "by customary law"," by the full customary law" (toluk adat buyunsha), "by the Shariat" and "by the law." The last, by the interpretation of several Kazakhs, is intended to give the decision greater force.

Makovetskii, in the foreword to the first part of his Materialy dlia Izucheniia Iuridicheskikh Obychaev Kirgizov /Materials for the Study of the Juridical Customs of the Kazakhs/, (Omsk, 1886), distinguishes innovations from old customs, relating primarily to precepts established under the khan Az Tauke. Khan Tauke assembled seven biis at Kul'-Tyube (in the Syr-Darya region) /old Tashkent uyezd/, among whom was the famous bii Tule Alimbekov, and these biis combined the old customs of the khans Kasym and Ishim ("Kasymkhannyng

zhol"-The Pure Road, of khan Kasym, and "Isymkhannyng Iski -The Old Road, of khan Ishim) into new customs, called Dzhety . These customs were not written down, but were given the short sayings and proverbs, which have been retained to a able degree until now, and enjoy universal respect. (1)

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1. Levshin says of khan Tyavka (Tauke): This is the Licurgus, the Draco of the Kazakh hordes. He lived in Turkestan, and commanded all the Kazakhs, as a whole. For the supervision and direction of each horde there were three chiefs subordinate to him: Tylya in the Great horde, Kazbek in the Middle horde, and Aitak in the LIttle horde (Part II, p. 64).

Bii Mikebai of the Perovsk uyezd acknowledged himself to be in complete ignorance /25/ of the tradition related above. He had only heard the expression: "kazaktyng kaska yoly" in the meaning of the "the real customary law of the Kazakhs." The biis Sultan and Khalbii know that all three hordes used to gather annually for conferences (maslagat), (1) on the Martube hill (in the mountains near Sairam).

1. Concerning the gradual change of the customary laws of the Caucasian mountaineers under the influence of maslagat, both of courts and of councils, see Adaty Kavkazskikh Gortsev /The Customary Laws of the Caucasian Mountaineers/, pp. 7-22.

The subjects of the conferences were questions of where to camp in the winter, where to go in the summer, how to achieve peace (buitsek tynchyimyz) and how to make war. But bii Sultan states positively that they did not change the customs (rasm). Until a new meeting of the hordes, the decisions of the last one were not broken (buzbeidy). Under Tauke khan, seven biis met together, "dzheti dzhargysh" or more exactly, "dzheti dzhargy," i. e., seven collaborators (ish bittiretgun). Among their number there were three eminent biis, one from each horde: Tule from the Great horde, from the Middle horde kaz dausty Kazbek, i. e., Kazbek with the voice of a goose (loud), and Aiteke from the Little horde. Sultan and Khalbii do not know that Tule Alibekov (and not Alimbekov) and the other biis combined the customs of khans Ishim and Kasym. The pure road of khan Kasym and the ancient road of khan Ishim are to them two names of one road through Kuk-Tyube, around Turbat, along which the khans had to nomadize when the Karakalpaks, having conquered Tashkent, expelled them from the valley. They do not give these expressions the significance of customs. At that time Tule ruled Tashkent, while he himself lived

in Sar-Tyube, near Tashkent. In the village of Kybrai lived his kinsman Kybrai the batyr. In the village of Bairikurgan lived his kinsman Baitik. In his old age Tule made his stableman Yunus-Hodja of the Halcha tribe a collector of taxes or duvanbegi in Tashkent. After the death of Tule, Yunus-Hodja expelled the Kazakhs from Tashkent. The war with them continued for 15-20 years, until Mamet Sherif-Atalyk who came from Kokand to help him, vanquished the Kazakhs. This was about a hundred years ago.

Concerning the same question of the Kazakhs in the Chimkent uyezd /26/ Isa Batyrbekov reported: "Esim Khan or the stoop-shouldered man Esim (esegey buli er Esim), as he was departing for Bukhara, told his vizir Kasym-Khan that he should be khan until his return (hence his nickname Khantursun), but made an agreement with him that he should not kill Esim Khan's family. After his return, 12 years later, Esim Khan found his family imprisoned in the Cheb or Khanym-chebi fortress on the upper course of the Sairam river. The proverb "the pure road, etc.," signifies the Kazakh customary laws established by both khans, or else the military road through the villages of Sailyk and Khatynailyk."

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423 side, i.e., the actual proprietors have no documents, these last are
695 required to swear an oath on the quantity of the land in dispute.

If land is planted by two clans, and one of the clans makes a complaint against the other, and during the investigation it is ascertained that one side has a document, and the other does not, and also lacks khan, kazi or beg documents showing that the land is in common between the two clans, then the side which has documents can refuse the other the use of the land.

If both sides on the disputed land have documents they must be carefully examined by learned mullahs who must decide which side has authentic documents and which has fraudulent ones, or those not worthy of attention. Nevertheless, an oath concerning the quantity of the disputed land is required from the side presenting the authentic, weighty documents, in order to support the suit.

If a dispute arises between two clans using common land, on which both sides have buildings, mills and trees, and if one side has nominal documents from khans or begs, while the names of the other /107/ side are not noted in this document, the affair is decided in favor of those having documents. Meanwhile those without documents must be indemnified for the value of their buildings, and then dispossessed from the land.

If one of the disputing sides shows a document delivered by the other side during the peaceable use of the land by them, and the documents says that the side presenting it yields the other a certain locality, or a certain number of kosh (1) of land, or else that a

1. One kosh is a pair of oxen and the amount of land tilled by them.

certain locality belongs to it or a certain number of kosh of land, then the side in possession of such a document is required to take the land on the basis of the document. Their claim to a larger quantity of land and water than is mentioned in the document is ignored.

If it is impossible to settle a land dispute of two clans using common land on the basis of inquiries of persons not implicated in the case, or on the basis of documents, it must be found out which side constructed buildings on the disputed land first, and to give an oath to this side.

423 The law of 1867 did not touch upon the land organization of
671 the natives at all. Now the code for the administration of the Turkestan area (the law of 12 June, 1886) establishes the land organi-

zation of the nomadic population in the following manner.

State lands, occupied by nomads, are left to the public use of the nomads without time limit, on the basis of customs and rules established in the code of 12 June, 1886.

The lands being used by the nomads are divided into winter camps, summer camps and cultivated land.

The winter camps are left to the /108/ public use of each volost separately, without time limit according to actual use and in accordance with the customs, and in case of disputes - according to the quantity of livestock owned and the extent of the economy.

Special assemblies are designated, with the permission of the Governor, among the volosts of the uyezd for the distribution of the winter camps and the examination of disputes caused by this distribution. When there are disputes between the volosts of different uyezds, the assemblies meet with the consent of the relevant authorities. The assemblies, under the chairmanship of a person specially appointed by the Governor, consist of three elected persons from each volost. The judgments of the assemblies are presented by the chief of the uyezd for the approval of the Governor and are entered in special books, which are preserved in the regional administration.

The distribution of the winter camps is made among the masters of the tents by village meetings. The number of livestock and the extent of the economy are taken as the basis for the distribution.

Each nomad has the right to build living quarters and farm buildings on the sector put at his disposal for the winter camp, and the community may not demand their removal. These buildings constitute the property of their owners. The land occupied by the buildings is transmitted by inheritance as long as the constructions exist. When the buildings are destroyed the land reverts to the community.

The summer camps are left to the public use of the volosts of the entire uyezd, and the actual use by them is determined by customs. The Kazakhs of the Syr-Darya oblast retain the right to cross over into neighboring steppe regions for summer nomadizing, but these are used with the permission of the Turkestan Governor-General, who enters into preliminary consultations with the steppe Governor-General concerning this.

After the mutual agreement of the communities on places suitable for both their winter and summer camps, special sectors are set aside for those wishing to engage in agriculture and growing hay. The distribution of land among the agriculturalists /109/ is left to a voluntary agreement among them according to custom.

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671 Buildings raised on the tilled lands of the nomads become their property, on the same bases which have been established for buildings on the winter camps.

Lands which lie under nomadic and livestock driving roads are left to the general use of the area. (1)

1. Articles 270-279 of the code for the administration of the Turkestan region.

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221 Nomadizing (kushpek) is one of the oldest forms of life, and is inherent to the herdsmen because of the fact that the many animals in their herds soon exhaust all the fodder under foot if they remain in one place.

The Kazakhs follow ancient custom in nomadizing even to the present time. They move about in communities of one clan, permitting only kinsmen in the female line or poor men, hiring themselves as workers, into their villages from other clans. Every clan has its precise places of summer (dzhaylyau) and autumn (kuzdyau) nomadizing.

On the eve of their departure from the winter camp they have a feast. After the feast, two fires are lit between the pillars of the gates, or if there are no gates, between a construction built to resemble gates. An older woman, who stands between them, takes a vessel made of a gourd (kabak) and breaks it, saying: "All sorrows have flown away with the breaking of this vessel" (kabak syndy kaygy kitty). Then the same woman takes the camels, which are already loaded, and leads them out of the enclosure. At the same time men,
[782] women and children jump across the fires, saying: away, away!. (alas, alas). They go about 5-6 versts from the winter camp, stop, set up their tents, slaughter horses and sheep and arrange a kudai, i. e., a sacrifice to a god. During the slaughtering of the animals, they say: "May we be as happy in /110/ a new place, as we were in the old" (iski dzhurtta iserke dzhanga dzhurtta dzharlyka).

They nomadize in groups (tap tap) of various numbers of tents. Setting out on the road is not determined by the authorities. The master of each tent is free to move or remain, as he wishes. The aksakals, or according to the Kirgiz Kurpetai Dauletkulov, rich men, give orders but do not insist. The same is true of the selection of places to stop and the grouping of the tents. In the summer they live

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All this was true, but no one paid any attention to it because no one in Orenburg believed in Nurali's sincerity, and the new government, being prejudiced against him, believed the re-establishment of peace in the horde to be impossible without changing its administration, or at least without a new khan.

Baron Igelstrom's first choice for a new khan was Kaip, son of Sultan Batyr, who had reigned in Khiva and was driven out for his rapaciousness and cruelty. We have spoken of him several times, as well as of his father. The central government could not ignore the acts of hostility committed by this sultan against the Russians, nor his conduct in Khiva, and therefore his election was put off until more detailed information could be collected concerning him (1). And in the end it did not take place (2).

1. Rescript from the Empress to Baron Igelstrom of November 25, 1785.

2. A similar rescript of November 12, 1786.

Kaip was proposed for this position twice. The first proposal was brought about by two plans drawn up by Baron Igelstrom, who had firmly decided to introduce a new form of government in the Little Horde.

In one of these plans he proposed to divide the horde into three sections, according to the number of its descent lines, namely those of Semirod, Baiulin, and Alimul, and to give each a khan, but to limit the authority of these new chiefs so that they would bear only an honorary title and be, in effect, only the executors of the commands of the supreme head of the government of Orenburg.

[272] The other plan was to abolish the position of khan in the Little Horde completely and gradually to apply to them the code given by Catherine for the administration of guberniyas.

This last thought was drawn from one of the cherished as well as most remarkable works of the Empress, and thus it was especially commended and confirmed in St. Petersburg.

[Great Horde]

596 could make no such allotment; the herd belonging to such a family was too small to allow for such a division.[98] Therefore it was held in common supporting those whom it could support, while those who were in excess might go off to join the family of a kinsman. The practices governing inheritance will be taken up below; here only certain aspects of family property can be treated. The son to whom allotment during the lifetime of the father was made on the occasion of the marriage of the son, lived and herded in common with his father.[99] Rights in the family property continued to be recognized even after brothers had separated, for example, if one brother died without male heirs, the family property passed to surviving brothers even if they did not live communally.[100]

593 The general position of the family in the social
671 structure of the Great Horde may be drawn from its situ-
602 ation before the law. The criminal law of the Great
685 Horde, as codified by Grodekov, had a number of references to the manner whereby theft within the family was handled. The Kazakh law in the matter of felony corresponded to what Durkheim has called restitutive law, rather than to his category of repressive law; and to the private delict in the somewhat more cumbersome terminology

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[98] Ibid., 2; Radloff, op. cit., I, 513.

[99] Izrastsov, 3.

[100] Ibid., 70.

[Great Horde]

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of Radcliffe-Brown.[101] The rustling of cattle (baranta/barymta) was permitted in the following circumstances, according to information received by Grodekov from the biis of the Great Horde:

1. By the son from the father, or the son's son from the grandfather, regardless of how many times or how much property was involved. On the other hand, the father had the right of seizure of the entire property of the son; the father had the right to indenture his son for annual terms, and the money thus earned was applied to the father's estate, i.e., the family property.

2. Stealing between sons of brothers could not be punished.

3. The sister's son might request aid from the uncles (mother's brothers). If this aid was not forthcoming, the sister's son (dzien) might make up to three seizures on the property of the mother's brothers. If he made seizure beyond that number of times, the difference was taken away from him. If he should steal a courser, the maternal uncle might require a return of like value. If the sister's son stole a fourth time, the maternal uncle might tell him: "Thou losest the rights of a nephew."

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4. Among kin related beyond the third degree (those with a common father's father), seizure was permitted, with the obligation to repay, however, as soon and as

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[101] Durkheim, Division of Labor, 112 ff; Radcliffe-Brown, Primitive Law.

604 601 nological usages on the one side and inheritance practices and other kinship relations on the other. A most noteworthy feature of the dżien relation is that it was a relationship in the maternal line, and this despite the preponderantly patrilineal orientation of the entire kinship structure. But it is not unusual to find matrilateral relations highlighted in a patrilineal society, and the paradox is only a seeming one, not real. The matrilateral relations will be found operative in rules of marriage.

596 We have seen that there was some differentiation between the rich Kazakh family and the poor, especially in respect to family size. The rich family was more likely to be polygynous in composition, was more likely to attract to itself close collateral (agnatically related) kin, and kept its members together longer. The wealthy Kazakh family thus conforms more closely to a corporate entity than does the poor one; it survives the life span of its members. The poor family was more likely to be of the simple conjugal type, dissolving on the death of the father, the son forming a new conjugal family. Both the rich and the poor family conformed, 596 ●671 however, to another criterion of the corporate entity: they were a single personality in the eyes of such legal mechanisms as the Kazakhs possessed. That is, the aksakal or bii stepped in only with great reluctance when a family was riven by an internal dispute, if he stepped in at all.

[Great Horde]

596 We have seen how seizure of property (usually in live-
●671 stock) was not regarded as theft between son and father, nephew and father's brother, or between sons of brothers; within certain limits, seizure between sister's son and mother's brother was not regarded as theft. Theft among family members was not recognized as such even where the members had set up separate households.[103]

596 The authority pattern was patriarchal within the family, whether of a wealthy or of a poor Kazakh. According to Dingelstedt, this was a categorical phenomenon: the authority of the father over the son, or the husband over the wife, was absolute.[104] This is corroborated for the Kazakhs of the Great Horde by Izraztsov, who asserts that the wife was without any rights, all rights residing in the husband, for example, in deciding on the marriage of the son or the daughter.[105] Both these statements are extreme, and must be qualified, as will be seen in what follows. Nevertheless, the patriarchal nature of the Kazakh household and family authority pattern must be accepted as a datum subject to slight amendment. We have seen that the father could even indenture his son for a fixed term, and apply the income to the family estate which he controlled.

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[103] Dingelstedt, 148.

[104] Idem.

[105] Izraztsov, 67.

[Great Horde]

583 Bride abduction from another Kazakh family was
562 rare, especially against the will of the girl. On the other hand, it was not unusual to steal women from the Kalmuks and the Kara-Kirgis, for whom there was a flourishing market, since the price for these women was less than the kalym.[148] However, women abducted and married by the Kazakhs of the Great Horde had little if any difference in status from Kazakh women; they retained their own religion without infringement, and occupied the same legal and economic position in the family; nevertheless, non-Kazakh women had no consanguines to turn to. The legal personality of the wife could never rise to that of the husband, however: for example, she could not bear witness in the adjudication of disputes, nor could she take an oath.[149] The exclusion of wives from the legal
571 process may be accounted for in the following manner:
572 the judicial process rested on the support which a bii
573 could give to his kinsmen in dispute with other kin groups; that is, the bii's[1] jurisdiction was his patrilineal descent group. The law in general was a matter of normative adjustment and balance between or among three agnatically related kin groupings. We have further seen that a wife never fully joined her husband's patri-

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[148] Ibid., 81, 91.

[149] Ibid., 68.

[1] [on the bii or "elder", cf. Cat. 116, AHI Mongolia, pp. 411-412 -- Analyst]

671 lineage; that she always retained ties, spiritual and
572 legal, to her natal family. Hence, since the law was
673 a matter of membership in specific corporate structures, the wife could not participate since she was not a member: she could not join her husband's, and she lived away from her father's.

576 In divorce, the woman operated at a distinct disadvantage to the man, but she was not entirely without rights. The husband could divorce his wife with ease, at will, merely by sending her back to her family.[150] But the wife had grounds at her disposal for the initiation of a divorce proceeding: if the husband was impotent or if he had left her for twelve months without sending news of himself, the wife could ask for a divorce.[151] More important were the considerations which militated against the husband's arbitrary use of his power, and which protected the woman: the husband who divorced his wife lost all claim to the kalym;[152] the provisions for disposal of the property (dotalia and arrha sponsalitia) were agreed on in the marriage arrangements.[153] Divorce was in any case a rare occurrence:

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[150] Dingelstedt, 155; Izraztsov, 92.

[151] Izraztsov, loc. cit. Dingelstedt, loc. cit., mentions seven years, not one year, as the necessary period for recognition of husband's desertion as grounds for divorce.

[152] Izraztsov, loc. cit.

[153] Dingelstedt, loc. cit.